



THE CITY OF NEW YORK
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February 18, 2022

BY ECF

Honorable William F. Kuntz, II
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Ahmad v. New York City Department of Education, et al
Docket No. 18-CV-3494(WFK)(LB)

Dear Judge Kuntz:

I am an Assistant Corporation Counsel in the office of Georgia M. Pestana, Corporation Counsel of the City of New York, and attorney for Defendants DOE and Carmen Fariña, Michael Payor, James Olearchik, Emilie Mittiga, Catrina Williams, Cedric Hall, Benjamin Grossman, Katherine G. Rodi, Kelly Houston, and Julia Findlay (“DOE Defendants”) in the above-referenced action. DOE Defendants submit this letter in opposition to *pro se* Plaintiff’s Letter Motion for Sanctions. See Mushtaq Ahmad v. New York City Department of Education, et al., No. 18-CV-3494(WFK)(LB), ECF Dkt. No. 94. Defendants request that Plaintiff’s Motion for Sanctions and Relief be denied in its entirety for the reasons stated below.

Plaintiff contention that I did not serve him with a copy of my Notice of Appearance and Affidavit of Service is untrue. See Plaintiff’s Motion For Sanctions, ECF Dkt. No. 95, p. 1; See also ECF Dkt. Nos. 91, 93. On January 19, 2022, I filed on ECF my Notice of Appearance and a Motion for Extension of Time to File a Response to Plaintiff’s Amended Complaint. See ECF Dkt. Nos. 91, 93. At the same time, my paralegal served Plaintiff with a hardcopy of these documents as well as an Affidavit of Service in accordance with your Honor’s individual rules. See Plaintiff’s Motion For Sanctions, Exhibit B, p. 2; See also “Individual Motion Practices and rules of Judge William F. Kuntz, II”, Rule II.E. On January 26, 2022, I filed an Affidavit of Service on ECF. See Affidavit of Service, ECF Dkt. No. 93, p.1.

On February 1, 2022, at 6:22 p.m., Plaintiff contacted me by E-mail and explained that he had not received a hardcopy version of my Notice of Appearance or Affidavit of Service. See Plaintiff’s Motion For Sanctions, Exhibit A, p.1. On February 2, 2022, at 9:53AM, I emailed Plaintiff PDF copies of all documents I had e-filed, including my Notice of Appearance, Motion for Extension of Time, and Affidavit of Service, and asked Plaintiff to confirm his address so I could mail him another hardcopy of the aforementioned documents. See id. Afterward, I found

the January 19 hardcopy mail in my inbox, returned by USPS as “No Mail Receptacle” had been found. See Plaintiff’s Motion For Sanctions, Exhibit B, p. 2. I now notice from a review of the envelope returned by the USPS that Plaintiff’s address was written on the envelope by my paralegal as “10 Parliament Drive, **New York**, NY 10956” instead of “10 Parliament Drive, **New City**, NY 10956.” Although the envelope had Plaintiff’s address proper zipcode of “10956,” the reference to “New York, NY” rather than “New City, NY” could have affected proper delivery of the correspondence. However, this was a harmless error without any intent to deceive or prejudice Plaintiff, and the error was promptly corrected when it was brought to my attention.

On February 3, 2022, my paralegal and I mailed Plaintiff another hardcopy of the e-filed documents via UPS overnight with the correct address. See Affidavit of Service dated February 3, 2022, p.1, annexed to this letter as “Exhibit 1.” I received confirmation on February 7, 2022 that this mailing was delivered to Plaintiff’s front door on February 4, 2022 at 9:47 AM. See UPS Tracking Confirmation, February 7, 2022, p. 1, annexed to this letter as “Exhibit 2.” However, on February 7, Plaintiff emailed me, stating that he had “decided to file a motion for sanctions regarding this matter” despite my attempts to serve him hardcopy versions of the e-filed documents. See Plaintiff’s Exhibit B, p. 3. Plaintiff’s motion for sanctions is ultimately inappropriate in light of the fact that he received PDF copies of the e-filed documents and has been served with hardcopy versions of the documents. Of further note, Plaintiff was not prejudiced by receiving these documents later than their filing date as they did not warrant any response.

Additionally, Plaintiff’s contention that I made false statements or misrepresentations to the Court or Plaintiff is untrue. I have not made any false statements or misrepresentations to the Court or Plaintiff or intended to make any false statements or misrepresentations regarding the filing or service of any document. Any statements that were made to the Court characterizing service of e-filed documents was, to the best of my knowledge, true and accurate based on my records and any documentation I received from USPS and UPS.

Finally, I have not made any false statements or misrepresentations to the Court or Plaintiff regarding the returned mail envelope from USPS. On February 2, I discovered that my January 19 mailing of the e-filed documents had been returned by USPS as “No Mail Receptacle” had been found. See Plaintiff’s Motion For Sanctions, Exhibit B, p. 2. While I recognize that the change in the “City” portion of the address might have affected service, I was unaware of the error at the time the envelope was mailed and I had no intent to deceive or prejudice the Plaintiff when I sent him a copy of the envelope and then confirmed his address to send a prompt second mailing via UPS overnight service.

Defendants respectfully submit that Plaintiff’s Motion for Sanctions should be denied in its entirety as Defendants’ counsel has not engaged in any disingenuous behavior or made false and misleading statements either to the Court or Plaintiff. Accordingly, for the foregoing reasons, Defendants request that Plaintiff’s motion be denied in its entirety.

Respectfully submitted,

*/s/ **Corey B. Hirsch***

Corey B. Hirsch

Assistant Corporation Counsel

cc: **VIA Overnight Mail and Email**

Mushtaq Ahmad

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